

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

D. C. Form No. 106A Rev.

8

TITLE OF CASE

ATTORNEYS

M. SUMMERS, dba/ THE M. SUMMERS COMPANY,  
an individual,  
  
vs

CONTINENTAL COPPER & STEEL INDUSTRIES,  
INC., a corporation

For plaintiff:  
Sanders & McElroy 582-5181  
205 Denver Building  
Tulsa, Oklahoma 74119

For defendant: Roger R. Scott 583-066  
Schuman, Pray, Scott & Livingston  
2800 4th National Bank Building  
Tulsa, Oklahoma 74119

Stephen S. Bernstein  
100 E. 42nd Street  
New York, New York 10017

STATISTICAL RECORD

COSTS

DATE

NAME OR  
RECEIPT NO.

REC.

DISB.

J.S. 5 mailed 9-2-69  
9-1-71  
9-1-72

Clerk

1969

8-11

Scott

15 00

8-14-69

C/D 7

15 00

J.S. 6 mailed 3-1-70  
4-1-72  
1-1-73

Marshal

4-21-70

Sanders

5 00

4-23-70

CD 46

5 00

Basis of Action: Declara-  
tory judgment

Docket fee

Witness fees

Action arose at: Tulsa

Depositions

DATE	PROCEEDINGS	Date Order or Judgment Noted
8-11-69	Petition for removal from the district court of Tulsa County, filed. ds	
8-11-69	Acknowledgment of service, filed. David H. Sanders, attorney for M. Summers dba/ The M. Summers Company, was served with and accepted service of attached petition for removal. ds	
8-11-69	Bond on Removal, filed. Continental Copper & Steel Industries, Inc. of New York City, as principal and National Surety Corporation as Surety, in the sum of \$500.00. ds	
8-12-69	Notice of removal, filed. m	
8-12-69	Acknowledgment, filed. m	
8-22-69	Defendant's motion to dismiss, filed. m	
8-22-69	Memorandum in support of motion to dismiss, filed. m	
9-16-69	Pltf's motion to produce documents, filed. m	
9-16-69	Brief in support of motion to produce documents, filed. m	
9-16-69	Requested admissions of fact, filed. m	
9-16-69	Plaintiff's first interrogatories, filed. m	
9-17-69	Summons Issued to Secretary of State, by request of Dave Sanders. js (Mail by registered mail)	
9-19-69	Notice to Take Deposition, filed, for 9-25-69 at 10:00 a.m. of B.L. (Whitey) Weller, President of Lawson Electric Supply Co.,/ js	
9-24-69	Return on service of summons, filed. Served Continental Copper & Steel Industries, Inc. at New York, New York, thru John Rogers, Secy of State of Oklahoma, by certified mail. \$3.00. ds	
9-26-69	Deposition of John Robert Clary, on behalf of plaintiff, taken on 9-12-69, before Frank L. Peterson, CSR, filed. \$79.00 paid by plaintiff. ds	
9-26-69	Application of defendant for extension of time, and order extending time for a period of 30 days from 9-26-69, filed. (AEB-J) ds	
10-29-69	Answers to requested admissions of fact, filed. ds	
10-29-69	Answers and objections to plaintiff's first interrogatories, filed. ds	
10-29-69	Memorandum in support of objections to interrogatories, filed. ds	
10-29-69	Response to motion to produce documents, filed. ds	
10-29-69	Memorandum in support of response to motion to produce documents, filed. ds	
11-12-69	Garnishment affidavit of David H. Sanders, filed. Garnishment summons issued. b	
11-18-69	Return on garnishee summons filed. Served Clark Electrical Supply Co. at Tulsa, Oklahoma on 11-13-69. (\$3.00) ds	
11-19-69	Answer of Garnishee, Clark Electrical Supply Co., filed. ds	
11-20-69	Deposition, filed. of Robert C. Kellogg on for the Plaintiff. js	
12-3-69	Application for an order directing garnishee, Clark Electrical Supply Company, to pay money into the Clerk of this court, filed. m	
1-22-70	Amendment to Complaint, filed. e	
1-27-70	Case called for hearing on motions and defendant's motion to dismiss taken under advisement, and remainder: Plaintiff's motion to produce documents, and objections to plaintiff's 1st interrogatories, remaind pending ruling on Defendant's motion to dismiss. Parties granted 10 days to file simultaneous briefs. (AEB-J)h	
2-4-70	Affidavit of plaintiff in regard to the debt. doing business in the State of Oklahoma, filed. m	
2-4-70	Affidavit of J. R. Rush in support of plaintiff's allegations of debt. doing business in the State of Okla., filed. m	
2-5-70	Response of plaintiff, filed. m	
2-5-70	Brief of plaintiff, filed. m	
2-6-70	Defendant's supplemental memo in support of motion to dismiss, filed. ds	
2-16-70	Summary Memorandum in Rebuttal of Plaintiff's Response filed.h	
2-16-70	Affidavit of Walter Knorr filed.h	

Continued

DATE	PROCEEDINGS	Date Order or Judgment Noted
2-18-70	Supplement to Response of Plaintiff, filed. h	
2-24-70	Order, filed and entered, dismissing cause for lack of jurisdiction. (AEB-J) ds	
3-4-70	Motion of plaintiff for a new trial, filed. g	
3-4-70	Brief in support of motion for new trial, filed. g	
3-4-70	Defendant directed to file responsive brief within 10 days. (AEB-J)g	
3-16-70	Deft's brief opposing pltf's motion for new trial, filed. m	
3-19-70	Supplement to deft's brief opposing pltf's motion for new trial, filed. m	
3-23-70	Plaintiff's response to supplement to defendant's brief opposing plaintiff's motion for new trial, filed. b	
3-23-70	Order overruling motion for new trial, filed. (AEB-J) ds	
4-21-70	Plaintiff's notice of appeal, filed, to Tenth Circuit. Copies mailed to Roger R. Scott, and CCoFA, Denver. b	
4-21-70	Bond for cost on appeal in the sum of \$250.00, filed - surety Reliance Insurance Company. b	
5-18-70	Appeal record (orig. + 3 copies) sent to USCA by certified mail. g	
5-20-70	Ordered by the Court that pursuant to Rule 10(e) the following documents be included as a supplement to record on appeal: 1) transcript of hearing on Jan. 27, 1970 before Judge Barrow, and 2) supplement to defendant's brief opposing plaintiff's motion for new trial, included exhibits attached thereto, filed 3-19-70. (AEB-J)g	
6-15-70	Court Reporter's transcript of proceedings on 1-27-70, hearing on motions, filed. (Larry Marks, Reporter)g	
6-15-70	Supplemental appeal record (orig. + 3 copies) sent to USCA, Denver. g	
11-24-70	Application of plaintiff to supplement appeal record, filed. g	
12-11-70	Order filed sustaining plaintiff's application to supplement record, filed. (Allen E. Barrow - Judge) copies mailed to attorneys and USCA b	
12-11-70	Supplemental appeal record forwarded to USCA. g	
3-15-71	Deposition of Ernest El Hilliard on part of plaintiff, filed. Gore Reporting Co., St. Louis, Mo. ds	
<del>4-5-71</del>	<del>Deposition of Ernest El Hilliard on part of plaintiff, filed. Gore Reporting Co., St. Louis, Mo. ds</del>	
8-10-71	Motion to Transfer, filed by Deft., filed. r	
8-10-71	Memorandum in support of Motion to Transfer, filed. r	
8-10-71	Ordered by the Court granting Pltf 10 days to respond to Deft's Motion to Transfer. (AEB-J)r	
8-16-71	Mandate and Opinion of USCA reversing judgment of 2-24-70, and remanding cause for further proceedings, filed and spread of record. g	
8-20-71	Pltf's Application for extension of time to file response to Deft's Motion to Transfer, Filed. r <i>to Judge's Office for Sign. on 8-20-71</i>	
8-30-71	Order granting Plaintiff unto August 31, 1971, to respond to Deft.'s Motion to Transfer, filed. (AEB-J) v <i>mailed copies</i>	
8-31-71	Response to deft's motion to transfer, filed. m	
9-1-71	Pltf's Motion for Default Judgment, filed. r	
9-1-71	It is ordered by the court that defts are granted 10 days from this date to respond to Pltf's Motion for Default Judgment. (AEB-J)r	
9-1-71	Garnishment affidavit, filed. r	
9-1-71	Garnishee Summons, filed and issued. r	
9-1-71	Certificate of mailing the Garnishee Summons to Clark Electrical Supply Co., filed. r	
9-3-71	Defendant's Response to Motion for Default Judgment, filed. v	
9-9-71	Answer of Garnishee, Clark Electrical Supply Company, filed. v	

DATE	PROCEEDINGS	Date Order or Judgment Noted
9-20-71	Garnishment Affidavit, filed. v	
9-20-71	Garnishee Summons issued by certified mail, filed. v	
9-23-71	Answer of garnishee, Clark Electrical Supply Co., filed. ds	
9-24-71	Garnishment Affidavit, filed. r	
9-24-71	Garnishee Summons issued by certified mail, filed. r	
10-4-71	Answer of Garnishee, Clark Electrical Supply Co., filed. v	
10-29-71	Motion of Plaintiff for summary judgment and Brief in support thereof and requested findings of fact and conclusions of law, filed. v	
10-29-71	---with exhibit 1 attached.	
10-29-71	Ordered by the Court that Defendant is granted 10 days from this date to respond to Plaintiff's Motion for summary judgment and brief in support thereof and requested findings of fact and conclusions of law. (AEB-J)v	
11-3-71	Application for extension of time by Defendant, filed. v (Order is part of the pleading--all sent to Judge)	
11-5-71	Order granting an extension of time until Nov. 20, 1971, within which to respond to Plaintiff's Motion for Summary Judgment and Brief in support thereof, filed. (AEB-J)v <i>Copies mailed.</i>	
11-10-71	Ordered by the Court that the U.S. Magistrate hear Deft's motion to transfer to Southern District of New York and pltf's motion for default judgment. (AEB-J)m	
11-10-71	Case called for hearing on pltf's motion for default judgment and deft's motion to transfer to Southern District of New York, these motions having been referred to the U.S. Mag. for hearing and recommendation. Both motions overruled and pltf. directed to prepare orders for Magistrate and Judge Barrow. (MLB-Mag)v	
11-17-71	Affidavit of Mynatt Sumners, in support of Motion for S/J, filed. r	
11-17-71	Affidavit of James T. Bolton, in support of Motion for S/J, filed. r	
11-23-71	Stipulation that the Deft. may have an extension of time within which to file a response to Plaintiff's Motion for Summary Judgment to and including Dec. 6, 1971, filed. v (Order part of the Pleading sent to J.)	
11-26-71	Answer of the Defendant Continental Copper and Steel Industries, Inc., filed. v Counterclaim as part of this pleading, also filed.	
11-23-71	Order, granting stipulation that defendant be granted an extension of time to and including 12-6-71 to file response to plaintiff's motion for summary judgment, filed. (AEB-J) ds <i>copies mailed.</i>	
11-29-71	Affidavit in support of motion for summary judgment of John E. Baker, filed. v	
1-17-72	Response to Motion for Summary Judgment, by the Deft., filed. v	
2-22-72	Garnishment affidavit to Westinghouse Electric Corp. filed. ds	
2-22-72	Garnishment affidavit to Hunzicker Brothers, Inc., filed. ds	
2-23-72	Garnishment summons issued to Westinghouse Electric Corp. by certified mail, filed. ds	
2-23-72	Garnishment summons issued to Hunzicker Brothers, Inc. by certified mail, filed. ds	
2-23-72	Certificate of mailing, filed. ds	
3-6-72	Affidavit of Phillips Breckinridge, Attorney for garnishee, filed. ds	
3-14-72	Affidavit of Robert L. Wells, filed. v	
3-16-72	Application of the Plaintiff for Garnishees to Pay Money into Court, filed. v <i>copy to MC</i>	
3-22-72	Order transferring cause of action, filed and entered, that recommendations of Magistrate are not adopted, and that cause of action is transferred to the USDC for the Southern District of New York. (AEB-J)hm (copies mailed counsel & transcript of record sent Clerk, So. Dist of N.Y.)	

DATE	PROCEEDINGS	Date Order or Judgment Noted
4-17-72	Order of USCA, 10th Circuit, directing respondents Allen E. Barrow and Continental Copper & Steel Industries to show cause why writ of mandamus or prohibition should not issue, filed. g	
7-6-72	Order of USCA, 10th Circuit, directing respondent Allen E. Barrow to vacate and set aside transfer order, filed. g	
8-4-72	Order, (Vacated & Set aside Order of Transfer) AEB-J, filed. js	
8-14-72	It is ordered by the court that this case is hereby transferred to Judge Luther Bohanon for all purposes. (AEB-J)h	
8-17-72	8-31-72 at 9:30 a.m. Case set for hearing/on all pending motions (pltf's motion for default judgment, pltf's motion for S/J, Pltf's application for garnishees to pay money into court) & matters necessary to processing case for pre-trial and trial and disposition. (LB-J)hm (notices mailed)	
8-23-72	Case stricken from hearing of 8-31-72 and reset for 9:30 a.m. 8-30-72. (LB-J)hm	
8-30-72	Case called for hearing on all pending motions and matters necessary to processing case for pretrial and trial and disposition. Pltf. counsel states that since case has not been retransferred back from So. Dist. of N. Y. as yet, matters be held in abeyance. Court denies request. Court denies pltf's motion for default judgment; Court denies pltf's motion for S/J. Court presents pre-trial order prepared by Court to parties and within 20 days they will submit it to Court for signature with any suggested changes and amendments. Parties waive jury trial in open court and case to be set for non-jury trial at an early date. Pltf. counsel to file brief on question of application for garnishee to pay money into Court & Court will rule on it at the time of approving pre-trial order. (LB-J)hm	
10-2-72	Pre-trial order, filed. (LB-J)hm	
10-11-72	Case set for non-jury trial and disposition 10-17-72 at 9:00 a.m. (LB-J)hm	
10-16-72	Informal hearing held. Deft. counsel announces case is being retransferred to this District from So. Dist. of N. Y. Court announces case will be continued from N/J setting of 10-17-72. Court states parties to stipulate as to which depositions shall be admitted into evidence & they shall be admitted. Case set for N/J trial and disposition 12-4-72 at 9:30 a.m. by agreement of all parties (put first on docket). (LB-J)hm	
10-24-72	C/C of memorandum decision and order transmitting file to NO. Dist. of Okla., filed. (Lee P. Gagliardi-Judge)hm	
10-24-72	Transcript of proceedings in So. Dist. of New York, filed. hm	
10-27-72	Notice to Take Deposition of Mynatt Sumners, in Tulsa, Okla., on 11-6-72, filed. v	
12-1-72	Stipulation, filed. hm -0207	

(OVER)

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DATE	PROCEEDINGS	Date Order or Judgment Noted
12-4-72	Stipulation(D. Sanders, and S. Bernstein,) filed. js	
12-4-72	Plaintiff's Requested Findings of Fact & Conclusions of Law, filed. js	
12-4-72	Findings of Fact, filed. js	
12-4-72	Order, filed, that garnishment heretofore served on Clark Electrical Supply Co. & Westinghouse Corp. be and are dissolved & said garnishees are directed to pay to Continental Copper & Steel Industries, Inc. any and all such funds in their possession due & owing to said co. (LB-J)hm (copies delivered)	
12-4-72	Deposition of M. Sumners on behalf of deft, filed. (Fees: \$100.00 pd. by deft)hm	
12-4-72	Deposition of Henry DeVine taken by deft., filed/ <sup>in open court.</sup> hm	
12-4-72	Case tried to the Court 12-4-72 and 12-5-72. Parties announce ready for trial. Mr. Stephen S. Bernstein admitted for the purpose of this trial only. Pltf. request certain statement of deft's answer, certain interrogatories with answers & certain answers to requested admissions of fact be admitted into evidence & they are so admitted. Pltf. tenders deposition of Mynatt Sumners filed in So. Dist. of N.Y. case & tender refused by deft. & Court, but Court may reconsider - deposition (in 2 volumes, kept by Clerk). Pltf. offers deposition of M. Sumners filed in this case & it is admitted. Depositions of Robert C. Kellogg, John Robert Clary & Henry DeVine read & admitted into evidence & parties stipulate entire depositions are admitted into evidence. By agreement, of parties, deposition of Ernest E. Hilliard admitted into evidence but not read. At close of Pltf's case, parties announce a stipulation of settlement has been agreed to, that deft. shall pay pltf. \$150,000 and therefrom shall deduct the sum of \$83,295.95 & shall pay the Pltf's atty. at the direction of the Pltf., a sum in cash, being \$66,704.05 & shall forthwith walk into the USDC for the So. Dist. of N.Y. & dismiss with prejudice the claim against Reliance Ins. Co. without costs & without delay. The Court accepts the stipulation of settlement & states that if default occurs by either party, case will be submitted to the Court for F/F & C/L & Judgment. (LB-J)hm	
12-5-72	Trial exhibits and 3 depositions of Mynatt Sumners, filed (in box in exhibit room). hm	
12-18-72	Stipulation for Dismissal with Prejudice, filed. <i>v - judgment to judge</i>	
12-21-72	Judgment of dismissal with prejudice, filed and entered. (LB-J)hm (copies mailed)	
1-16-73	Transcript of a stipulation re settlement, December 5, 1972, filed. Frank M. Sicles, CSR. ds	